



[6735-01]

## **FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION**

### **29 CFR Part 2700**

#### **Procedural Rules to Permit Parties to File and Serve Documents Electronically**

**AGENCY:** Federal Mine Safety and Health Review Commission

**ACTION:** Interim rule with request for comments.

**SUMMARY:** The Federal Mine Safety and Health Review Commission is amending its procedural rules to permit parties to file and serve documents electronically. The Commission is permitting electronic filing through an electronic case management system that the Commission will implement in 2014. The electronic case management system will allow the Commission to manage its caseload more efficiently.

**DATES:** This interim rule will take effect on **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. The Commission will accept written and electronic comments received on or before **[INSERT DATE 120 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER]**.

**ADDRESSES:** Electronic comments should state “Comments on Electronic Rule Changes” in the subject line and be emailed to [mmccord@fmshrc.gov](mailto:mmccord@fmshrc.gov). Written comments should be mailed to Michael A. McCord, General Counsel, Office of the General Counsel, Federal Mine Safety and Health Review Commission, 1331 Pennsylvania Avenue, NW, Suite 520N, Washington, DC 20004-1710, or sent via facsimile to 202-434-9944.

**FOR FURTHER INFORMATION CONTACT:** Michael A. McCord, General

Counsel, Office of the General Counsel, Federal Mine Safety and Health Review Commission, at (202) 434-9935 or mmccord@fmshrc.gov.

**SUPPLEMENTARY INFORMATION:**

A. Background

In 2014, the Commission will begin using a new electronic case management system (e-CMS) in order to more efficiently manage its caseload. The e-CMS has two main functions. It will manage files electronically for the Commission and allow parties to file documents electronically with the Commission. Although parties may file documents electronically through the system, parties may also continue to file documents non-electronically as they have in the past. The e-CMS simply provides parties with an electronic option for filing in addition to the methods they currently use.

The Commission's e-CMS permits parties to file documents electronically through a portal which may be accessed on the Commission's website ([www.fmshrc.gov](http://www.fmshrc.gov)). In order to use the system, parties will have to register to become a user by following instructions provided on the Commission's website. As part of the registration process, the party must enter an email address into the system. The Commission's e-CMS will not serve documents on parties electronically. If parties wish to serve other parties with documents electronically, they must email the documents to the intended recipients.

The Commission is changing a few of its procedural rules through these interim rules to explicitly permit electronic filing and service. The intent of the rule changes is to promote efficiency, flexibility, and simplicity. The Commission invites comments on the

rule changes, particularly after parties have experience using the e-CMS. The Commission intends to publish final rules approximately six to nine months after the interim rules become effective. The time for publishing final rules will be adjusted as necessary to address any issues.

#### B. Section-by-Section Analysis

Set forth below is a summary of the changes made in these interim rules. Some conforming changes and minor editorial modifications are not discussed.

##### Section 2700.5 General requirements for pleadings and other documents; status or informational requests.

Rule 5 has been revised to add a new paragraph (b), which describes how a party may file a document. For clarity, paragraph (b) specifically lists the various methods of filing. The rule provides in part that filing may be accomplished “in person, by U.S. Postal Service, by third-party commercial carrier, by facsimile transmission, or by electronic transmission.” Paragraph (b) also explains that the instructions for electronic filing are provided on the Commission’s website ([www.fmshrc.gov](http://www.fmshrc.gov)).

Newly designated paragraph (f) of Rule 5 describes the effective dates for the specified methods of filing. The effective dates for filing set forth in Interim Rule 5 are largely unchanged from prior effective dates for filing.

Prior to Interim Rule 5, when filing was by personal delivery or facsimile, filing was “effective upon successful receipt by the Commission.” 29 C.F.R. § 2700.5(e)(2). When filing was by mail, filing was “effective upon mailing, except that the filing of a motion for extension of time, any document in an emergency response plan dispute

proceeding, a petition for review of a temporary reinstatement order, a motion for summary decision, a petition for discretionary review, [and] a motion to exceed page limit [was] effective upon receipt.” Id. (citations omitted).

Under interim Rule 5(f)(2), filing by U.S. Postal Service is effective upon mailing except for the same exceptions noted above that have applied for the filing of a motion for extension of time, any document in an emergency response plan dispute proceeding, a petition for review of a temporary reinstatement order, a motion for summary decision, a petition for discretionary review, and a motion to exceed page limit. The filing of such documents is effective only upon receipt. When filing is in person, by third-party commercial carrier, or by facsimile, filing is effective upon successful receipt by the Commission.

Interim Rule 5(f) newly provides, however, that when filing is by electronic transmission, filing is effective upon successful receipt by the Commission. When a document has been electronically filed with the Commission through the Commission’s e-CMS, and the document has been successfully received by the Commission, an employee in the Commission’s Docket Office will send an email to the filer indicating that the document has been successfully received. It is possible that a document which has been filed with the Commission’s e-CMS will not be accepted as “successfully received.” For instance, an electronically filed document may not be “successfully received” if the filer erred in entering the docket number or failed to upload the document that was intended to be filed. When a document has not been “successfully received,” an employee in the Commission’s Docket Office will send an email informing the filer that

the document was not successfully received and describe the error that prevented successful receipt. The meaning of “successful receipt” for documents electronically filed through e-CMS will be described on the Commission’s website.

Interim Rule 5(g) changes the number of copies of documents required to be filed with the Commission. Previously the Commission’s rules generally provided that in cases before a Judge, parties were required to file the original document, along with one copy for each docket, while in cases before the Commission, parties were required to file the original and six copies. See 29 C.F.R. § 2700.5(f). Under interim Rule 5(g), parties are required to file only the original document, unless otherwise ordered, regardless of whether the case is before a Judge or the Commission, and regardless of the method used for filing the document. In other words, only the original document should be filed whether the document is filed with a Judge or the Commission and whether the document is filed in person, by U.S. Postal Service, by third-party commercial carrier, by facsimile, or by electronic transmission.

Interim Rule 5(j) clarifies that information concerning filing requirements, the status of cases, or docket information may be accessed through the Commission’s website ([www.fmshrc.gov](http://www.fmshrc.gov)).

#### Section 2700.6 Signing of documents.

Rule 6 has been revised to add a new paragraph (a). New paragraph (a) describes what constitutes a signature for documents filed electronically and non-electronically. For documents not filed by electronic transmission, a party or representative of the party must sign a document by handwriting his or her signature. For documents filed by

electronic transmission, a party may sign a document by including the notation “/s/” followed by the typewritten name of the party or representative, or by including a graphical duplicate of his or her signature. The meaning of a signature that complies with interim Rule 6(a) remains unchanged from that previously set forth in Rule 6 prior to these interim rules. That is, when a party or a representative signs a document in the manner described in new paragraph (a), the signature shall constitute his or her certificate that he is authorized and qualified to represent the party and that he or she has read the document; that the document is well grounded in fact and warranted, and that it is not interposed for any improper purpose.

Section 2700.7 Service.

Rule 7 was amended by revising paragraph (c). Interim Rule 7(c)(1) describes the methods by which a document may be served on another party. As with filing, those methods include in person, by U.S. Postal Service, by third-party commercial carrier, by facsimile transmission and by electronic transmission. Because the Commission’s e-CMS will not serve documents on other parties electronically, if a party wishes to serve a document electronically, the document must be served by email. Interim Rule 7(c)(1) also provides that for documents filed pursuant to §§ 2700.9(a), 2700.24, 2700.45, 2700.70(f), 2700.75(f) and subpart F (applications for temporary relief), the method of service used must be no less expeditious than that used for filing, except that if service by email is impossible, the filing party must serve in person, by third party commercial carrier, or by facsimile transmission, resulting in same-day delivery. For instance, if a party electronically files a motion for an extension of time pursuant to § 2700.9(a) but

cannot serve the motion by email, the filing party must choose one of the other methods of service that results in same-day delivery. Rule 7(c)(1) was also revised to remove the page limit for documents served by facsimile.

Interim Rule 7(c)(2) sets forth the effective dates for service. The effective dates for service are largely unchanged. Prior to the interim rules, Rule 7(c)(2) provided that when service is by personal delivery or facsimile, “service is effective upon successful receipt by the party intended to be served,” and that when service is by mail, service is effective upon mailing. Similarly, Interim Rule 7(c)(2) specifies that when service is by U.S. Postal service, service is effective upon mailing, and that when service is in person, by third-party commercial carrier, or by facsimile, service is effective upon successful receipt of the party intended to be served. Interim Rule 7(c)(2) adds a new provision that when service is by email, service is effective upon successful receipt by the party intended to be served.

The provisions of paragraph (d) relating to service upon a representative set forth in former Rule 7 were moved and inserted in paragraph (a) of Interim Rule 7. Those provisions remain otherwise unchanged.

The requirements for proof of service are set forth in Interim Rule 7(d). Interim Rule 7(d) provides that all pleadings and other filed documents shall be accompanied by a certification setting forth the date, method of service, and all contact information used. The requirements that the statement of proof must be a certification and that the contact information used to serve the document must be included in the certification are new.

Section 2700.8 Computation of time.

Rule 8 was revised by adding a new paragraph (d). Since documents can be filed electronically with the Commission after the Commission's offices are closed, the Commission revised Rule 8 to specify the time for filing a document, which varies depending upon the method used for filing the document. Interim Rule 8(d) specifies that the due date for electronic filing and for filing by facsimile ends at midnight Washington, D.C. local time. For filing by other means, the due date ends at 5:00 p.m. Washington, D.C. local time.

The Commission has not specified a time zone for service. The Commission may include a time zone for service in future rulemaking after it has gained experience with any issues relating to electronic filing and service.

Section 2700.9 Extensions of time.

Paragraph (a) of Rule 9 was revised to provide that a motion for an extension of time and any statement in opposition shall include proof of service on all parties by a means of delivery no less expeditious than that used for filing the motion, except that if service by email is impossible, the filing party must serve in person, by third party commercial carrier, or by facsimile, resulting in same-day delivery.

Similar changes have been made to §§ 2700.24(d), 2700.45(a), 2700.45(f), 2700.46(d), 2700.70(f), and 2700.75(f), and will not be discussed separately.

Section 2700.31 Penalty settlement.

Paragraph (d)(1) of Rule 31 has been revised in part to state that filing is effective upon successful receipt by the Commission of a motion to approve settlement and proposed order that is filed electronically. Prior to Interim Rule 31, section 2700.31(d)(1)



had provided that filing was effective upon the date of the electronic transmission of the motion and proposed order. See 29 C.F.R. § 2700.31(d)(1). The Commission changed Interim Rule 31(d)(1) in this manner to make it consistent with other interim rule changes. Other conforming changes have been made to Rule 31.

#### C. Notice and Public Procedure

Because this amendment deals with agency management and procedures, the notice and comment provisions of the Administrative Procedure Act do not apply pursuant to 5 U.S.C. 553(a)(2) and (b)(3)(A).

The Commission is an independent regulatory agency and, as such, is not subject to the requirements of E.O. 12866, E.O. 13132, or the Unfunded Mandates Reform Act, 2 U.S.C. 1501 et seq.

The Commission has determined that this rulemaking is exempt from the requirements of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) because a general notice of proposed rulemaking is not required under 5 U.S.C. 553(b).

This rule does not contain a new or amended information collection requirement subject to the Paperwork Reduction Act (44 U.S.C. 3501 et seq.).

The Commission has determined that the Congressional Review Act, 5 U.S.C. 801, is not applicable here because, pursuant to 5 U.S.C. 804(3)(C), this rule “does not substantially affect the rights or obligations of non-agency parties.”

#### List of Subjects in

#### 29 CFR Part 2700

Administrative practice and procedure, Mine safety and health, Penalties,

Whistleblowing.

Accordingly, Chapter XXVII of Title 29 of the Code of Federal Regulations is amended as follows:

PART 2700—PROCEDURAL RULES

1. The authority citation for Part 2700 continues to read as follows:

Authority: 30 U.S.C. 815, 820, 823, and 876.

2. Section 2700.3 is amended by revising paragraph (c) to read as follows:

§ 2700.3 Who may practice.

\* \* \* \* \*

(c) Entry of appearance. A representative of a party shall enter an appearance in a proceeding under the Act or these procedural rules by signing the first document filed on behalf of the party with the Commission or Judge in accordance with § 2700.6; filing a written entry of appearance with the Commission or Judge; or, if the Commission or Judge permits, by orally entering an appearance in open hearing.

\* \* \* \* \*

3. Section 2700.5 is revised to read as follows:

§ 2700.5 General requirements for pleadings and other documents; status or informational requests.

(a) Jurisdiction. A proposal for a penalty under section 110, 30 U.S.C. 820(c); an answer to a notice of contest of a citation or withdrawal order issued under section 104, 30 U.S.C. 814; an answer to a notice of contest of an order issued under section 107, 30 U.S.C. 817; a complaint issued under section 105(c) or 111, 30 U.S.C. 815(c) and 821;

and an application for temporary reinstatement under section 105(c)(2), 30 U.S.C.

815(c)(2), shall allege that the violation or imminent danger took place in or involves a mine that has products which enter commerce or has operations or products that affect commerce. Jurisdictional facts that are alleged are deemed admitted unless specifically denied in a responsive pleading.

(b) How to file. Unless otherwise provided for in the Act, these rules, or by order, filing may be accomplished in person, by U.S. Postal Service, by third-party commercial carrier, by facsimile transmission, or by electronic transmission. Instructions for electronic filing may be accessed on the Commission's website (<http://www.fmshrc.gov>).

(c) Where to file. Unless otherwise provided for in the Act, these rules, or by order:

(1) Filing by electronic transmission. A document may be filed by electronic transmission with the Commission and its Judges. Instructions for electronic filing may be accessed on the Commission's website (<http://www.fmshrc.gov>).

(2) Filing in person, by U.S. Postal Service, by third-party commercial carrier, or by facsimile transmission -- (i) Before a Judge has been assigned. Before a Judge has been assigned to a case, all documents shall be filed with the Commission. Documents filed with the Commission shall be addressed to the Executive Director and mailed or delivered to the Docket Office, Federal Mine Safety and Health Review Commission, 1331 Pennsylvania Avenue, NW, Suite 520N, Washington, DC 20004-1710; facsimile delivery shall be transmitted to (202) 434-9954.

(ii) After a Judge has been assigned. After a Judge has been assigned, and before a decision has been issued, documents shall be filed with the Judge at the address set forth on the notice of the assignment.

(iii) Interlocutory review. Documents filed in connection with interlocutory review shall be filed with the Commission in accordance with § 2700.76.

(iv) After a Judge has issued a final decision. After the Judge has issued a final decision, documents shall be filed with the Commission as described in paragraph (c)(2)(i) of this section.

(d) Necessary information. All documents shall be legible and shall clearly identify on the cover page the filing party by name. All documents shall be dated and shall include the assigned docket number, page numbers, and the filing person's address, business telephone number, cell telephone number if available, fax number if available, and e-mail address if available. Written notice of any change in contact information shall be given promptly to the Commission or the Judge and all other parties.

(e) Privacy considerations. Persons submitting information to the Commission shall protect information that tends to identify certain individuals or tends to constitute an unwarranted intrusion of personal privacy in the following manner:

(1) All but the last four digits of social security numbers, financial account numbers, driver's license numbers, or other personal identifying numbers, shall be redacted or excluded;

(2) Minor children shall be identified only by initials;

(3) If dates of birth must be included, only the year shall be used;

(4) Parties shall exercise caution when filing medical records, medical treatment records, medical diagnosis records, employment history, and individual financial information, and shall redact or exclude certain materials unnecessary to a disposition of the case.

(f) Effective date of filing. Unless otherwise provided for in the Act, these rules, or by order:

(1) Filing by electronic transmission. When filing is by electronic transmission, filing is effective upon successful receipt by the Commission. The electronic transmission shall be in the manner specified by the Commission's website (<http://www.fmshrc.gov>).

(2) Filing in person, by U.S. Postal Service, by third-party commercial carrier, or by facsimile transmission. When filing is by U.S. Postal Service, filing is effective upon mailing, except that the filing of a motion for extension of time, any document in an emergency response plan dispute proceeding, a petition for review of a temporary reinstatement order, a motion for summary decision, a petition for discretionary review, and a motion to exceed page limit is effective only upon receipt. See §§ 2700.9(a), 2700.24(d), 2700.45(f), 2700.67(a), 2700.70(a), (f), and 2700.75(f). When filing is in person, by third-party commercial carrier, or by facsimile, filing is effective upon successful receipt by the Commission.

(g) Number of copies. Unless otherwise ordered or stated in this part, only the original of a document shall be filed.

(h) Form of pleadings. All documents, including those filed electronically, shall appear in at least 12-point type on paper 8-1/2 by 11 inches in size, with margins of at least 1 inch on all four sides. Text and footnotes shall appear in the same size type. Text shall be double spaced. Headings and footnotes may be single spaced. Quotations of 50 words or more may be single spaced and indented left and right. Excessive footnotes are prohibited. The failure to comply with the requirements of this paragraph or the use of compacted or otherwise compressed printing features may be grounds for rejection of a pleading.

(i) Citation to a decision of a Judge. Each citation to a decision of a Judge should include “(ALJ)” at the end of the citation.

(j) Status or informational requests. Information concerning filing requirements, the status of cases, or docket information may be accessed through the Commission’s website (<http://www.fmssrc.gov>). In the event such information is unavailable through the Commission’s website or the requesting party does not have access to the website, such status or informational requests must be directed to the Docket Office of the Federal Mine Safety and Health Review Commission, 1331 Pennsylvania Avenue, NW, Suite 520N, Washington, DC 20004-1710.

4. Section 2700.6 is revised to read as follows:

§ 2700.6 Signing of documents.

(a) Signature -- (1) Documents not filed by electronic transmission. A party or representative of the party shall sign a document by handwriting his signature.

(2) Documents filed by electronic transmission.

(i) A party or representative of the party may sign a document by including the notation “/s/” followed by the typewritten name of the party or representative of the party filing the document.

(ii) A party or representative of the party may sign a document by including a graphical duplicate of his handwritten signature.

(b) Meaning of Signature. A document or signature may not be denied legal effect or enforceability solely because it is in electronic form. When a party or representative of the party signs a document in the manner described in paragraph (a) of this section, that person’s signature shall constitute his certificate:

(1) That under the provisions of the law, including these rules and all federal conflict of interest statutes, he is authorized and qualified to represent the particular party in the matter; and

(2) That he has read the document; that to the best of his knowledge, information, and belief formed after reasonable inquiry it is well grounded in fact and is warranted by existing law or a good faith argument for extension, modification, or reversal of existing law; and that it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.

5. Section 2700.7 is revised to read as follows:

§ 2700.7 Service.

(a) Generally. A copy of each document filed with the Commission shall be served on all parties. Whenever a party is represented by an attorney or other authorized representative who has entered an appearance on behalf of such party pursuant to §

2700.3, service thereafter shall be made upon the attorney or other authorized representative. In addition, a copy of a notice of contest of a citation or order, a petition for assessment of penalty, a discrimination complaint, a complaint for compensation, and an application for temporary relief shall be served upon the representative of miners, if known.

(b) Posting. A copy of an order, citation, notice, or decision required under section 109 of the Act, 30 U.S.C. 819, to be posted on a mine bulletin board shall, upon receipt, be immediately posted on such bulletin board by the operator.

(c) Manner of service. Unless otherwise provided for in the Act, these rules, or by order:

(1) Methods of service. Documents may be served in person, by U.S. Postal Service, by third-party commercial carrier, by facsimile transmission, or by electronic transmission (email). For documents filed pursuant to §§ 2700.9(a), 2700.24, 2700.45, 2700.70(f), 2700.75(f), and subpart F (applications for temporary relief), the method of service used must be no less expeditious than that used for filing, except that if service by electronic transmission (email) is impossible, the filing party must serve in person, by third party commercial carrier, or facsimile transmission, resulting in same-day delivery.

(2) Effective date of service. When service is by U.S. Postal service, service is effective upon mailing. When service is in person, by third-party commercial carrier, by facsimile transmission, or by electronic transmission (email), service is effective upon successful receipt by the party intended to be served.

(d) Proof of service. All pleadings and other filed documents shall be



accompanied by a certification setting forth the date, method of service, and all contact information used.

6. Section 2700.8 is revised to read as follows:

§ 2700.8 Computation of time.

Unless otherwise provided for in the Act, these rules, or by order, the due date for a pleading or other deadline for party or Commission action (hereinafter “due date”) is determined sequentially as follows:

(a) Except to the extent otherwise provided herein (see, e.g., §§ 2700.24 and 2700.45), when the period of time prescribed for action is less than 11 days, Saturdays, Sundays, and federal holidays shall be excluded in determining the due date.

(b) When a party serves a pleading by a method of delivery resulting in other than same-day service, the due date for party action in response is extended 5 additional calendar days beyond the date otherwise prescribed, after consideration of paragraph (a) of this section where applicable.

(c) The day from which the designated period begins to run shall not be included in determining the due date. The last day of the prescribed period for action, after consideration of paragraphs (a) and (b) of this section where applicable, shall be included and be the due date, unless it is a Saturday, Sunday, federal holiday, or other day on which the Commission’s offices are not open or the Commission is open but unable to accept filings, in which event the due date shall be the next day which is not one of the aforementioned days.

(d) The time of filing with the Commission shall be determined using Washington, D.C., local time. For filing by electronic means and by facsimile transmission, the due date ends at midnight Washington, D.C., local time. For filing by other means, the due date ends at 5:00 p.m. Washington, D.C., local time.

Example 1: A motion is filed with the Commission on Monday, July 1, 2013. Under § 2700.10(d), other parties in the proceeding have 8 days in which to respond to the motion. Because the response period is less than 11 days, intervening weekends and holidays, such as Thursday, July 4, 2013, are excluded in determining the due date. A response is thus due by Friday, July 12, 2013. In addition, those parties not served with the motion on the day it was filed have 5 additional calendar days in which to respond, or until Wednesday, July 17, 2013.

Example 2: A Commission Judge issues his final decision in a case on Friday, July 5, 2013. Under § 2700.70(a), parties have until August 4, 2013, to file with the Commission a petition for discretionary review of the Judge's decision. Even though the decision was mailed, 5 additional calendar days are not added, because paragraph (b) of this section only applies to actions in response to parties' pleadings. However, because August 4, 2013, is a Sunday, the actual due date for the petition is Monday, August 5, 2013.

Example 3: Pursuant to § 2700.24(a), the Secretary of Labor files a referral of a citation arising out of a dispute over the content of an operator's emergency response plan. Certain subsequent deadlines in such cases are specifically established by reference to calendar days, and thus paragraph (a) of this section would not necessarily apply in

determining due dates. For instance, if the referral was filed on Thursday, July 11, 2013, the short and plain statement the operator must file in response within 5 calendar days would be due Tuesday, July 16, 2013, because the intervening weekend days would not be excluded in determining the due date. If the fifth calendar day were to fall on a weekend, holiday, or other day on which the Commission is not open however, the terms of paragraph (c) would apply and the due date would be the next day the Commission is open.

7. Section 2700.9 is amended by revising paragraph (a) to read as follows:

§ 2700.9 Extensions of time.

(a) The time for filing or serving any document may be extended for good cause shown. Filing of a motion requesting an extension of time is effective upon receipt. A motion requesting an extension of time shall be received no later than 3 days prior to the expiration of the time allowed for the filing or serving of the document, and shall comply with § 2700.10. The motion and any statement in opposition shall include proof of service on all parties by a means of delivery no less expeditious than that used for filing the motion, except that if service by electronic transmission (email) is impossible, the filing party must serve in person, by third party commercial carrier, or by facsimile transmission, resulting in same-day delivery.

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8. Section 2700.24 is amended by revising paragraph (d) to read as follows:

§ 2700.24 Emergency response plan dispute proceedings.

\* \* \* \* \*

(d) Filing and service of pleadings. The filing with the Commission of any document in an emergency response plan dispute proceeding, including the referral, is effective upon receipt. A copy of each document filed with the Commission in such a proceeding shall be served on all parties and on any miner or miners' representative who has participated in the emergency response plan review process by a method of service no less expeditious than that used for filing, except that if service by electronic transmission (email) is impossible, the filing party must serve in person, by third party commercial carrier, or by facsimile transmission, resulting in same-day delivery.

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9. Section 2700.31 is amended by revising paragraph (d) to read as follows:

§ 2700.31 Penalty settlement.

\* \* \* \* \*

(d) Filing and service of motion accompanied by proposed order -- (1) Electronic filing. A motion and proposed order shall be filed electronically according to the requirements set forth in this rule and instructions on the Commission's website (<http://www.fmshrc.gov>). Filing is effective upon successful receipt by the Commission.

(i) Signatures. Any signature line set forth within a motion to approve settlement submitted electronically shall include the notation "/s/" followed by the typewritten name of the party or representative of the party filing the document, or by the graphical duplicate of the handwritten signature of the party or representative of the party filing the document. Such representation of the signature shall be deemed to be the

original signature of the representative for all purposes unless the party representative shows that such representation of the signature was unauthorized. See 29 CFR 2700.6.

(ii) Status of documents. A motion and proposed order filed electronically constitute written documents for the purpose of applying the Commission's procedural rules (29 CFR part 2700), and such rules apply unless an exception to those rules is specifically set forth in this rule.

(2) Filing by non-electronic means. A party may file a motion to approve settlement and an accompanying proposed order by non-electronic means only with the permission of the Judge.

(3) Service. A settlement motion and proposed order shall be served on all parties or, if parties are represented, upon their representatives, by the most expeditious method possible and at least five business days before the motion and proposed order are filed with the Commission. If a party cannot be served by e-mail, facsimile transmission, or commercial delivery, a copy of the motion and proposed order may be served by mail. A certificate of service shall accompany the motion and proposed order setting forth the date, method of service, and all contact information used.

\* \* \* \* \*

10. Section 2700.45 is amended by revising paragraphs (a), (b), and (f) to read as follows:

§ 2700.45 Temporary reinstatement proceedings.

(a) Service of pleadings. A copy of each document filed with the Commission in a temporary reinstatement proceeding shall be served on all parties by a method of

service as expeditious as that used for filing, except that if service by electronic transmission (email) is impossible, the filing party must serve in person, by third party commercial carrier, or by facsimile transmission, resulting in same-day delivery.

(b) Contents of application. An application for temporary reinstatement shall state the Secretary's finding that the miner's discrimination complaint was not frivolously brought and shall be accompanied by an affidavit setting forth the Secretary's reasons supporting his finding. The application also shall include a copy of the miner's complaint to the Secretary, and proof of notice to and service on the person against whom relief is sought by the most expeditious method of notice and delivery reasonably available.

\* \* \* \* \*

(f) Review of order. Review by the Commission of a Judge's written order granting or denying an application for temporary reinstatement may be sought by filing with the Commission a petition, which shall be captioned "Petition for Review of Temporary Reinstatement Order," with supporting arguments, within 5 business days following receipt of the Judge's written order. The filing of any such petition is effective upon receipt. The filing of a petition shall not stay the effect of the Judge's order unless the Commission so directs; a motion for such a stay will be granted only under extraordinary circumstances. Any response shall be filed within 5 business days following service of a petition. Pleadings under this rule shall include proof of service on all parties by a means of delivery no less expeditious than that used for filing, except that if service by electronic transmission (email) is impossible, the filing party must serve in

person, by third party commercial carrier, or by facsimile transmission, resulting in same-day delivery. The Commission's ruling on a petition shall be made on the basis of the petition and any response (any further briefs will be entertained only at the express direction of the Commission), and shall be rendered within 10 calendar days following receipt of any response or the expiration of the period for filing such response. In extraordinary circumstances, the Commission's time for decision may be extended.

\* \* \* \* \*

11. Section 2700.46 is amended by adding a new paragraph (d) to read as follows:

§ 2700.46 Procedure.

\* \* \* \* \*

(d) Service of pleadings. A copy of each document filed with the Commission under subpart F of this part must be served on all parties by a means of delivery no less expeditious than that used for filing, except that if service by electronic transmission (email) is impossible, the filing party must serve in person, by third party commercial carrier, or by facsimile transmission, resulting in same-day delivery.

12. Section 2700.70 is amended by revising paragraph (f) to read as follows:

§ 2700.70 Petitions for discretionary review.

\* \* \* \* \*

(f) Motion for leave to exceed page limit. A motion requesting leave to exceed the page limit shall be received not less than 3 days prior to the date the petition for discretionary review is due to be filed, shall state the total number of pages proposed, and

shall comply with § 2700.10. Filing of a motion requesting an extension of page limit is effective upon receipt. The motion and any statement in opposition shall include proof of service on all parties by a means of delivery no less expeditious than that used for filing the motion, except that if service by electronic transmission (email) is impossible, the filing party must serve in person, by third party commercial carrier, or by facsimile transmission, resulting in same-day delivery.

\* \* \* \* \*

13. Section 2700.75 is amended by revising paragraph (f) to read as follows:

§ 2700.75 Briefs.

\* \* \* \* \*

(f) Motion for leave to exceed page limit. A motion requesting leave to exceed the page limit for a brief shall be received not less than 3 days prior to the date the brief is due to be filed, shall state the total number of pages proposed, and shall comply with § 2700.10. Filing of a motion requesting an extension of page limit is effective upon receipt. The motion and any statement in opposition shall include proof of service on all parties by a means of delivery no less expeditious than that used for filing the motion, except that if service by electronic transmission (email) is impossible, the filing party must serve in person, by third party commercial carrier, or by facsimile transmission, resulting in same-day delivery.

\* \* \* \* \*

Dated: December 9, 2013.



Mary Lu Jordan,

Chairman, Federal Mine Safety and Health Review Commission.

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